

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

RON SCHILLING,

Plaintiff,

v.

WILLIAM KELLEY, et al.,

Defendants.

ORDER

Case No. 23-cv-331-wmc

On May 22, 2023, this court entered an order directing plaintiff Ron Schilling to submit the \$402 filing fee or a motion for leave to proceed without prepaying the fee. Now plaintiff has filed a letter, writing to the Clerk of Court: "I believe the Court is misapprehending the nature of the request, inasmuch as I am *not* indigent and do not need to pay the filing fee in installments; an unnecessary process which would only burden the Business Office each time the Regular Account balance exceeds a certain percentage." In short, he wishes to pay the entire filing fee, all at once, with release account funds.

Federal courts lack authority to tell state officials whether and to what extent a prisoner may withdraw release account funds to pay court fees. However, there is an exception for initial partial payments under 28 U.S.C. § 1915(b). As this court has observed, "with respect to initial partial payments . . . the Prisoner Litigation Reform Act supersedes any restrictions state law imposes on the availability of funds in a prisoner's release account." *Carter v. Bennett*, 05-cv-524-bbc (W.D. Wis. Nov. 17, 2005). Since Schilling has not sought leave to proceed *in forma pauperis*, this court has no authority to order the state to allow him to withdraw *any* amount from his release account to pay the filing fee.

ORDER

IT IS ORDERED that:

1. Plaintiff Ron Schilling's request to use release account funds to pay the entire filing fee in this case is DENIED.

2. Plaintiff may have until September 15, 2023, to submit the \$402 filing fee or a motion for leave to proceed *in forma pauperis* and a trust fund account statement for the period beginning approximately November 17, 2022, and ending approximately May 17, 2023. If he fails to response to this order or show cause for his failure to respond by September 15, 2023, then plaintiff will be deemed to have withdrawn this action voluntarily and the case will be dismissed without prejudice.

Entered this 25th day of August, 2023.

BY THE COURT:

/s/

ANDREW WISEMAN
Magistrate Judge